

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEROY SHUMAKER,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. 8:15CR268

FINDINGS AND RECOMMENDATION

This case is before the court on the defendant Leroy Shumaker's Motion to Dismiss (#38). The defendant, Leroy Shumaker, moves the court for an order dismissing the case for noncompliance with the Speedy Trial Act, 18 U.S.C. § 3161. The government filed a Brief in Response to Defendant's Motion to Dismiss (#41). The government's brief concedes that more than seventy countable days under the Speedy Trial Act have passed and that the defendant is entitled to a dismissal. The government requests the indictment be dismissed without prejudice.

After review of the docket in this case, I find that the Speedy Trial Clock ran on December 10, 2015, and as of the date of this ruling, an additional fifty-one (51) non-excludable days have passed. Although dismissal under the act is mandatory, I find the indictment in this case should be dismissed without prejudice because, as the government's brief points out: The indictment in this case charges the defendant with a serious offense, possession with intent to distribute five grams or more of methamphetamine (actual); the facts and circumstances in this case evidence a neglect, as opposed to any intentional, violation of the Speedy Trial Act; the government has not attempted to gain a tactical advantage nor does the government frequently violate the

provisions of the Speedy Trial Act; the defendant has not demonstrated in his motion that he has been prejudiced by the violation of the Speedy Trial Act; and a re-prosecution on the facts of this case would not negatively affect the administration of the Speedy Trial Act or of justice in general.

IT IS THE FINDING AND RECOMMENDATION to the Honorable Senior District Judge Lyle E. Strom:

Upon consideration of the defendant Leroy Shumaker's Motion to Dismiss (#38), defendant's Memorandum in Support of Dismissal Under Speedy Trial Act (#39), and the government's Brief in Response to Defendant's Motion to Dismiss (#41), it is recommended that the defendant's Motion to Dismiss (#38) be granted, and the indictment for possession with intent to distribute five grams or more of methamphetamine (actual) be dismissed without prejudice.

Dated this 24th day of February 2016.

BY THE COURT:

s/ F.A. Gossett, III
United States Magistrate Judge